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Attorneys for Defendants
MERRITT COLLEGE
and SHIRLEY MACK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH SANTOS,

Plaintiff,

vs.

MERRITT COLLEGE, SHIRLEY MACK, an
individual and DOES 1-10, inclusive,

Defendants.

CASE NO. C 07 5227 EMC

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFF'S "REVISED
SECOND AMENDED
COMPLAINT"**

Date: May 14, 2008
Time: 10:30 a.m.
Dept: Courtroom C, 15th Fl.
Judge: Hon. Edward M. Chen

Accompanying Papers: Memorandum
of Points and Authorities; Declaration
of Alyson Cabrera; [Proposed] Order

PLEASE TAKE NOTICE that on May 14, 2008, at 10:30 a.m. or as soon thereafter as the
matter may be heard in the above-entitled court, Defendants MERRITT COLLEGE and
SHIRLEY MACK (collectively referred to as "Defendants"), will and hereby do move the Court
to dismiss Plaintiff ELIZABETH SANTOS' "Revised Second Amended Complaint"¹ pursuant to
Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be

¹ For purposes of this Motion, and to avoid confusion going forward, Defendants shall refer to Plaintiff's
"Revised Second Amended Complaint" as Plaintiff's "Third Amended Complaint" ("TAC").

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1 granted. Additionally, Defendants will and hereby do move the Court to strike certain portions
2 from Plaintiff's TAC pursuant to Federal Rule of Civil Procedure 12(f).

3 The Motion to Dismiss is made on the following grounds:

- 4 1. The relief which Plaintiff seeks as to her *First Cause of Action* does not provide
5 for remedies, such as injunctive relief or monetary damages, and therefore, it
6 should be dismissed with prejudice.
- 7 2. Plaintiff's *Second Cause of Action* for violation of the Age Discrimination Act of
8 1975 is barred as Plaintiff failed to timely exhaust the administrative remedies set
9 forth in the Act and Code of Federal Regulations. Furthermore, because she
10 failed to exhaust her administrative remedies, Plaintiff is precluded from seeking
11 any equitable or other relief.
- 12 3. Plaintiff's *Third Cause of Action* for violation of California Government Code
13 Section 11135 fails because she did not exhaust her administrative remedies
14 before filing a private lawsuit.
- 15 4. The California Tort Claims Act abolished all common law or judicially declared
16 forms of liability against public entities and for that reason alone, Plaintiff's *Fifth*
17 *and Sixth Causes of Action* fail as a matter of law.
- 18 5. Additionally, Plaintiff failed to plead compliance with the claim presentation
19 requirements set forth in the California Tort Claims Act and therefore, Plaintiff's
20 *Fourth, Fifth and Sixth Causes of Action* fail as a matter of law.

21 Defendants' Motion to Strike is made on the following grounds: In addition to seeking
22 dismissal of these six causes of action, Defendants also seek to strike, pursuant to Federal Rule
23 of Civil Procedure 12(f), Plaintiff's reference to the Unruh Civil Rights Act as set forth in her
24 TAC at 1:27-2:1. Plaintiff asserts that her action arises under various statutes, including the
25 Unruh Civil Rights Act, but her TAC contains no cause of action for violation of the Unruh Civil

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1 Rights Act, codified at California Civil Code sections 51 and 51.3, and no allegations that would
2 support such a claim. As such, the reference to this statute must be stricken.

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5 Dated: March 20, 2008

GORDON & REES LLP

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7 By: /s/ Alyson Cabrera
8 ALYSON CABRERA
9 Attorneys for Defendants
10 MERRITT COLLEGE and
11 SHIRLEY MACK
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